Supreme Court, U.S.
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No 09-1042

IN THE
SUPREME COURT OF THE UNITED STATES

BHUPENDRA K SHAH- PETITIONER

vs

THE NYS DEPARTMENT OF CIVIL SERVICE, NYS OFFICE OF MENTAL HEALTH AND NATHAN KLINE INSTITUTE FOR PSYCHIATRIC RESEARCH- RESPONDENTS

ON PETITION FOR A REHEARING TO
THE SUPREME COURT OF
THE UNITED STATES

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May 27, 2010

POINT I

Reason for developing uniform guidelines to establish prima facie case of retaliation in the context of failure to hire

There is no dispute among the circuits about the application of temporal proximity criteria for cases involving retaliatory discharge where a public employer is in control of both the employee and the position held by employee. However, in a case involving retaliatory failure-to-hire, there is a controversy among the circuits about the application of temporal proximity criteria This court has a golden opportunity to develop a uniform guideline for establishing prima facie case of retaliation in the context of failure-to-hire. It would lower costs to the court and would help our judges and lawyers to decide retaliatory cases quickly and efficiently. Conversely, it would adversely impact our judicial economy. In addition, the court has inherent (or granted by the Congress) power to develop uniform guidelines where there are controversies among the circuits.

POINT II

Guarantee of Constitutional rights

There appears to be misunderstanding in dismissing the petitioner's constitutional claims when the panel stated "We determined, however, that plaintiff had exhausted his retaliation claims against Nathan Kline Institute "NKI") and remanded the case to the district court with respect to those claims only " (See App 3).

Since the complaint had several Title VII claims with no claim of violation of his Equal protection clause of the 14th Amendment, the panel was referring to the Title VII claims only and not constitutional claims , which were discovered during the discovery period Pursuant to Bay Area Laundry and Dry Cleaning Pension Trust Fund v. Feber Corp. of Cal 522 U S. 192 (1997) and other cases, the petitioner is entitled to accrue and plead these guaranteed constitutional rights

Here, during 1991-1994, the respondents had hired twelve foreigners with H1-B Visa without advertisements They created appropriate permanent State positions (meaning befitting their education, skills and experience) for the exclusive benefit of twelve foreigners. But they failed to create any appropriate position for the petitioner during 1991-1994. The petitioner was indeed treated differently in the same situation The respondents had violated the Equal Protection Clause of the 14th Amendment by failing to provide the same employment opportunities to the petitioner as provides to the foreigners

Pursuant to the Bay Area Laundry and Dry Cleaning Pension Trust Fund (Supra), the petitioner is entitled to amend his complaint accordingly Your honor, there is a guarantee that the Courts would protect the constitutional rights of American Citizens And this court has constitutional duties to protect the constitutional rights of American citizens

Your honor, failure to protect the Constitutional rights of American citizens would give a wrong

message to the respondents For instance, a hiring person with Chinese or Nazi or communist connections would apply this case law in their benefit and would layoff all American citizens and hire their country men with H1-B Visa Therefore, it is extremely important to protect the constitutional rights of the petitioner

In addition, your honor, the respondents have perjured themselves and have provided false papers to the Immigration and Naturalization Agency of the U S. Government to hire their friends So failure to protect the constitutional rights of the petitioner would encourage the respondents to do any thing including layoffs, retaliation and the deprivation of constitutional rights of American citizens

Prayer

The petitioner humbly prays this court to read this brief liberally If for some unknown reasons, the court does not wish to address the issue of Retaliation, the the petitioner humbly prays this court to protect his constitutional rights

Respectfully Submitted

Bhupendra K Shah, Ph D

May 27, 2010

CERTIFICATE OF GOOD FAITH

BHUPENDRA K SHAH- PETITIONER

VS

THE NYS DEPARTMENT OF CIVIL SERVICE, NYS OFFICE OF MENTAL HEALTH AND NATHAN KLINE INSTITUTE FOR PSYCHIATRIC RESEARCH- RESPONDENTS

I, the undersigned, certify that the petition for a rehearing is presented in good faith and not for delay

Executed on May 27, 2010

Bhupendra K. Shah

(Bhupendra K Shah)